IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

OP.No. 11476 of 1998(N)

PETITIONER:

THE INDO AMERICAN HOSPITAL, WEST GATE, VAIKOM, OWNED BY BAHULEYAN CHARITABLE FOUNDATION, REPRESENTED BY ITS MANAGING DIRECTOR SMT. K. J. BHAGEERADHY.

BY ADV. SRI.M.PATHROSE MATHAI
SRI.SAJI VARGHESE

RESPONDENTS:
----

1. **THE SENIOR SUPERINTENDENT, ELECTRICAL MAJOR SECTION, VAIKOM.**
2. **THE ASSISTANT EXECUTIVE ENGINEER, KSEB MAJOR SECTION, VAIKOM.**
3. **THE ELECTRICITY INSPECTOR (APPOINTED UNDER SECTION 36 OF THE INDIAN ELECTRICITY ACT 1910 FOR THE VAIKOM AREA), KSEB BOARD, VAIKOM.**
4. **THE KERALA STATE ELECTRICITY BOARD, REPRESENTED BY ITS CHAIRMAN, TRIVANDRUM.**

BY ADV. SRI. A. SUDHI VASUDEVAN, SC, KSEB.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 3.3.2006 ALONG WIT OP NO.25381/98, THE COURT ON 19.12.2006 DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

O.P. NOS. 11476/98 N & 25381/98 V

Dated this the 19th December, 2006

JUDGMENT

The petitioner in both the writ petitions is one and the same. Petitioner is a consumer having electric connection. Ext.P2 is the Statement of amounts paid towards electricity bills for the period between 7/94 and 7/97. Ext.P3 was a demand notice dated 22.5.1998 requiring the petitioner to pay Rs.3,25,235/= stated to be the charges for electrical energy supplied from 7/94 to 7/97. Petitioner addressed Ext.P4. In OP No.25381/98, after referring to the very same Exhibits and the interim order passed staying Ext.P3, reference was made to Ext.P6. Ext.P6 is under challenge in the second writ petition.

O.P. NO. 11476 OF 1998 N

2. The relief sought is a direction to the respondent Board to apply to the Electrical Inspector of the area for estimating the

quantity of energy supplied by the Board. Learned Senior Counsel for the petitioner, Shri M. Pathros Mathai, relied on the decision of the Apex Court in Bombay Electricity Supply & Transport Undertaking v. Laffans (India) (P) Ltd. And Another ((2005 (4) SCC 327). He would contend that paragraphs 13 and 14 of the said Judgment should result in the Original petitions being allowed. Paragraphs 13 and 14 are extracted below:

> "13. For the period for which, according to the appellant, the meter was not correct, none of the parties has referred the dispute to the Electrical Inspector. The meter though it is alleged by the appellant to have remained not correct, readings have been regularly recorded, bills raised and also paid by the consumer, respondent 1. According to Section 26 (6), the readings would bind the appellant and Respondent 1 both. It has never been the case of the appellant at any stage that the meter was not correctly recording the consumption of electricity on account of being non-functional due to any fraud committed or device or trick adopted by the consumer, Respondent 1 or that the body seal of the meter was found broken or tampered with. Respondent 1 was accepting and honouring the demands raised by the appellant and, therefore, Respondent 1 cannot be expected to have raised a dispute and sought for a reference for determination by the Electrical Inspector. The appellant could not have, therefore, revised the demand for such period based on average consumption during the previous year. There is yet

another reason why the entitlement of the appellant to recover charges from Respondent 1 may have to be denied. According to the proviso appended to sub-section (4) of Section 26, the licensee cannot take off or remove any such meter as to which difference or dispute of the nature described in sub-section (6) has arisen until the matter has been determined by the Electrical Inspector. The purpose is to preserve the evidence. The dispute shall be expeditiously disposed of by the Electrical Inspector by applying scientific method of investigation to find out if the meter was incorrect and if so then what was the extent of error. In the present case, the meters said to be incorrect have been removed and replaced by the appellant. Admittedly, no dispute has been raised and referred to the Electrical Inspector. The most material evidence being the meter itself has been lost by the act of the appellant in removing the incorrect meter. The appellant cannot be permitted to take advantage of its own act and omission - the act of removing the meter and the omission to make a reference to the Electrical Inspector.

14. The material available on record before us does not enable the separation of the impugned demand by bifurcating the same into two on the criterion discussed hereinabove. The appellant shall have to be left free to examine its records and then revise its demand. We may clarify that the demand raised by the appellant based on the average consumption during the similar period in the last year is justified, in the facts and circumstances of the present case, for the period for which the reading was lost on account of the meter having been found burnt. Accordingly, the calculation based on the record of consumption for the corresponding period from the previous year shall hold goods. The appellant shall

> raise a demand accordingly and the first respondent shall be bound to honour the same. So far as the period for which the meter is said to be incorrect, the demand has not been revised by basing it on the finding arrived at by the Electrical Inspector and hence is not available to be revised. The meter is alleged by the appellant to be not correct and yet the appellant has not made a reference to the Electrical Inspector under Section 26(6). The appellant cannot now be allowed to raise an additional demand over and above the demand raised through the bills which were issued for that period and paid by the first respondent. The right to raise additional bills stands lost by the appellant for its failure to proceed in accordance with Section 26(6) of the Electricity Act, 1910."

3. On the other hand, learned counsel for the Board relied on the decision in M/s. Southern India Marine Products Company (Private) Ltd. v. Kerala State Electricity Board and Another (ILR 1995 (3) Ker. 573). It is submitted by him that in this case, there was nothing wrong with the electrical meter or even the C.T. Meter. He would submit that during inspection it was detected that the C.T. Connection was in the reverse direction as a result of which the Meter recorded only consumption of one Phase alone out of the three Phases and among the remaining two Phases, one Phase was reading on

reverse direction as such neutralising the reading of the other Phases also. It is pointed out that it is due to the wrong C.T. Connection. Learned counsel for the petitioner would rely on the decision of the Apex Court in Belwal Spinning Mills Ltd. And Others v. U.P. State Electricity Board and Another ((1997) 6 SCC 740). Learned counsel relied on paragraphs 28 and 47 which read as follows:

> "28. The Solicitor General has submitted that in *Bharat Barrel* case *the appellant checked the correctness of all meters of (sic) multiplying the constant and of actual connections of CT-operated meters and an additional check meter was installed and on comparison of the two meters, it was revealed that due to defective connections, the original meter was registering 76.6% less than of its actual use. Therefore, the revised bills of 76.6% of energy consumed from 1.6.1963 amounting to Rs.2,28,750.70 was served on the respondent- Company. The respondent disputed the revised bills and referred the dispute to the Electrical Inspector under Section 26(6) of the Electricity Act.*
>
> 47. On a conjoint reading of various sub-sections of Section 26 of the Electricity Act, it is evident that consumption of electricity or electrical quantity in the supply, shall be ascertained by means of a correct meter and the meter and other apparatus for recording the consumption of electricity by a consumer will be deemed to be correct if the recording

> is within the permissible limit of error as prescribed. If a dispute as to the correctness of the meter is raised by any party for reference, such dispute can be decided only by the Electrical Inspector and both the licensee and the consumer have to accept the estimate of supply of electricity to the consumer as may be determined by the Electrical Inspector for the statutory period referred to in sub-section (6) of Section 26."

4. This is not a case where the meter as such was not functioning. The contention is that the C.T. Connection was in the reverse direction. In other words, even the C.T. Meter was not out of order, contends the standing counsel. It was in similar circumstances that a Division Bench of this Court in M/s. Southern India Marine Products Company (Private) Ltd. v. Kerala State Electricity Board and Another (ILR 1995 (3) KER. 573) held that Section 26(6) of the Electricity Act is not applicable. The Court held as follows:

> "In all these cases the meters referred to above were capable of registering the amount of energy supplied. However, the meters could not register the amount of energy supplied due to the fact that the wiring given to the meter was not properly made.

> Therefore, there is no question of dispute as to the correctness of the meter. But, it is only due to the wrong connection to the meter which has resulted in the meter not registering the quantity supplied to the consumer. It is a human error or omission either knowingly or not in properly connecting the meter. It is not disputed in all these cases that there was wrong connection of the wire to the meter which resulted in the meter rotating in reverse direction, showing only a lesser percentage of the actual consumption. Only if the question actually arise for consideration, there is an obligation to refer the dispute. It cannot be the intention of the legislature to refer "disputes" the moment the meter was not recording properly. It should be seen verified and decided that there is no manipulation, tampering or fraud with the wiring or connection to the meter. It is quite possible that meter could be made to go wrong or go wrong on its own due to accidental or mistaken connection to the meter. So long as there is no defect in the meter itself no question arise whether the meter is correct or not. Therefore, there is no scope for invoking sub-section (6) of section 26 of the Indian Electricity Act so as to decide as to whether the meter is correct or not."

It is, no doubt, contended on behalf of the petitioner that there was no communication served by the respondent Board apart from Ext.P3 and this is impermissible. They were not served with any report of the inspection, it is contended. The question, therefore, that arises for consideration is whether on the facts of

this case, could it be that Section 26(6) of the Indian Electricity Act, 1910 stands attracted. The contention of the Board that it is not attracted for the reason that there was nothing wrong either with the Meter or even with the Current Transformers. What was found during the inspection was that the connection was in the reverse direction resulting in the Meter recording consumption of one Phase alone out of the three phases.

5. I feel that this is a case which is covered by the Judgment of a Division Bench of this Court in M/s. Southern India Marine Products Company (Private) Ltd. v. Kerala State Electricity Board and Another (ILR 1995 (3) Ker. 573). This is not a case where the Meter was as such erroneous. It is only due to the connection being in the reverse direction that the correct consumption was not being registered in the Meter. It is true that there is a reference in paragraph 28 of the Judgment of the Apex Court in Belwal Spinning Mills Ltd. And Others v. U.P. State Electricity Board and Another ((1997) 6 SCC 740), to a case of original meter registering less than the actual use due

to defective connection and the matter being referred under Section 26(6) of the Indian Electricity Act. But, It cannot be said that the Apex Court has pronounced on the question that even in such a case, Section 26(6) of the Act is applicable. In such circumstances, I feel that there is no merit in OP No.11476/98 and it is accordingly dismissed.

O.P. NO. 25381 OF 1998 V

6. What is challenged is Ext.P6. In this case, the amount is demanded for the period from 3/96 to 9/97. Contentions, of course, of the petitioner include that there is duplication as Ext.P3 is for the period from 7/94 to 7/97. Reliance is placed on Section 26(6) also. Ext.P6 refers to the Audit Report and detailed statements and they indicate that the question relates to the quota and consumption in excess. I do not think that the provision of Section 26(6) can be said to be attracted to such a situation. At any rate, I feel that this is a matter which can be

agitated in an appeal before the competent body. Accordingly, this Original Petition is disposed of directing that if the petitioner prefers an appeal before the competent body within a period of one month from the date of receipt of a copy of this Judgment, the said authority will consider the same after hearing the petitioner and pass orders in accordance with law within a period of two months from the date of filing the appeal.

K. M. JOSEPH, JUDGE

kbk.

K. M. JOSEPH, J.

OP NOS. 11476/98 N

&

25381/98 V

JUDGMENT

19th December, 2006.